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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.

Plaintiff, Counter-defendant
v.

APPLE INC.,

Defendant, Counterclaimant

Case No. 4:20-cv-05640-YGR

**APPLE INC.'S ADMINISTRATIVE
MOTION TO SEAL**

The Honorable Thomas S. Hixson

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Federal Rule of Civil Procedure 26(c) 1

Local Rule 79-5..... 1

Pursuant to Federal Rule of Civil Procedure 26(c) and Local Rule 79-5, Apple Inc. (“Apple”) moves the Court to seal portions of two discovery dispute joint statements, submitted pursuant to the Court’s Standing Discovery Order. The two statements contain information sealable under controlling law and Local Rule 79-5. Specifically, these documents contain competitively sensitive, non-public information regarding Apple’s business codenames regarding ongoing confidential projects and internal information about Apple’s ongoing compliance with foreign regulations. Apple’s proposed redactions of that information are highlighted in **YELLOW** in the un-redacted versions of each document that Apple is filing under seal and are itemized in the concurrently filed Declaration of Mark A. Perry (the “Perry Declaration”).

LEGAL STANDARD

“The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense,” including preventing the disclosure of information. *See* Fed. R. Civ. P. 26(c). The Court has “broad latitude” “to prevent disclosure of materials for many types of information, including, *but not limited to*, trade secrets or other confidential research, development, or confidential information.” *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (emphasis in original); *see also Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (compelling circumstances exist to seal potential release of trade secrets) (citing *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)); *PQ Labs, Inc. v. Qi*, 2014 WL 4617216, at *1 (N.D. Cal. Sept. 15, 2014) (granting multiple motions to seal where publication would lead to the disclosure of trade secrets); *Apple Inc. v. Rivos, Inc.*, 2024 WL 1204115, at *1 (N.D. Cal. Mar. 21, 2024) (granting request to seal “internal product codenames” and noting that a prior request for the same had also been granted).

Although a party must show compelling circumstances to seal information appended to dispositive motions, the standard for non-dispositive motions is “good cause.” *In re Anthem, Inc. Data Breach Litig.*, 2018 WL 3067783, at *2 (N.D. Cal. Mar. 16, 2018); *Rembrandt Diagnostics, LP v. Innovacon, Inc.*, 2018 WL 1001097, at *1 (S.D. Cal. Feb. 21, 2018); *see DNA Genotek Inc. v. Spectrum Sols., L.L.C.*, 2023 WL 4335734, at *2 (S.D. Cal. May 10, 2023). In general, requests to seal information should be narrowly tailored “to remove from public view only the material that is protected.” *Ervine v.*

1 *Warden*, 214 F. Supp. 3d 917, 919 (E.D. Cal. 2016); *Vineyard House, LLC v. Constellation Brands U.S.*
 2 *Ops., Inc.*, 619 F. Supp. 3d 970, 972 n.2 (N.D. Cal. 2021) (Gonzalez Rogers, J.) (granting a motion to
 3 seal “because the request is narrowly tailored and only includes confidential information”).

4 DISCUSSION

5 Apple seeks to seal sensitive business information regarding internal business codenames
 6 regarding ongoing confidential projects and internal information about Apple’s ongoing compliance with
 7 foreign regulations. *See* Perry Decl. ¶ 5. Specifically, the Parties are filing joint letters regarding
 8 ongoing discovery disputes, and the letters include codenames regarding projects that Apple has not
 9 made public, and information regarding efforts to comply with foreign regulations such as the Digital
 10 Markets Act (“DMA”). The information and documents reveal sensitive information about Apple’s
 11 confidential business decisions, and the documents have already been marked as highly confidential in
 12 the course of discovery and were not been challenged by Epic under the extant protective order. *See id.*
 13 ¶¶ 4–5.

14 At the outset, Apple’s administrative motion to seal is subject to the “good cause” standard
 15 because it concerns non-dispositive joint statements regarding discovery. *See, e.g., Kamakana*, 447 F.3d
 16 at 1179 (“[T]he public has less of a need for access to court records attached only to non-dispositive
 17 motions because those documents are often unrelated, or only tangentially related, to the underlying
 18 cause of action.”); *Lee v. Great Am. Life Ins. Co.*, 2023 WL 8126850, at *2 (C.D. Cal. Nov. 13, 2023)
 19 (“Matters concerning discovery generally are considered nondispositive of the litigation”) (quotation
 20 omitted); *see also In re Anthem, Inc. Data Breach Litig.*, 2018 WL 3067783, at *2; *Rembrandt*
 21 *Diagnostics, LP*, 2018 WL 1001097, at *1; *Al Otro Lado, Inc. v. Wolf*, 2020 WL 5422784, at *4 (S.D.
 22 Cal. Sept. 10, 2020).

23 Apple easily meets the good cause standard here. *Lamartina v. VMware, Inc.*, 2024 WL
 24 3049450, at *2 (N.D. Cal. June 17, 2024) (good cause to seal internal email communications). Apple’s
 25 limited proposed redactions protect against the harmful disclosure of Apple’s internal business decision-
 26 making, including non-public project codenames and its compliance with foreign regulations. *See DNA*
 27 *Genotek Inc.*, 2023 WL 4335734, at *2 (finding good cause where disclosure would “undercut” a party’s
 28 “position ... in the marketplace”); *Apple Inc.*, 2024 WL 1204115, at *1. Indeed, courts routinely hold

1 that the type of information and analysis at issue here is sealable because its disclosure can be
 2 competitively harmful when a company's confidential information is revealed. *See, e.g., Virun, Inc. v.*
 3 *Cymbiotika, LLC*, 2022 WL 17401698, at *2 (C.D. Cal. Aug. 19, 2022) ("Courts in this Circuit have
 4 found potential harms arising from public disclosure of trade secrets or a business' confidential financial
 5 and pricing information to be sufficient reason to seal"); *Apple Inc.*, 2024 WL 1204115, at *1 (granting
 6 request to seal "references to[] internal product codenames"). Apple operates in an intensely
 7 competitive marketplace, and thus has taken extensive measures to protect the confidentiality of its
 8 information. *See* Perry Decl. ¶ 3. Disclosure of the sealed information could harm Apple's business
 9 interests. *Id.* ¶ 4.

10 Moreover, Apple has narrowly tailored its sealing request to include only the information
 11 necessary to protect Apple's confidential business information and data. *See* Perry Decl. ¶ 6;
 12 *Krommenhock v. Post Foods, LLC*, 2020 WL 2322993, at *3 (N.D. Cal. May 11, 2020) (granting motion
 13 to seal "limited" information); *see also Phillips*, 307 F.3d at 1211; *Williams v. Apple Inc.*, 2021 WL
 14 2476916, at *2–*3 (N.D. Cal. June 17, 2021) (noting Apple's narrowed sealing requests with "tailored
 15 redactions" and finding "most of Apple's sealing requests[] appropriate" to the extent the disclosures
 16 "would harm Apple's competitive standing"); Dkt. No. 643 at 3 (finding Apple's proposed redactions
 17 appropriate for an exhibit when redactions were "narrowly tailored" to "sensitive and confidential
 18 information, the disclosure of which would result in competitive harm to Apple"). Apple has only
 19 partially redacted a handful of lines of text in two five-page letters. The great majority of the letters
 20 remain unredacted. *See* Perry Decl. ¶ 6.

21 For the foregoing reasons, there is good cause that warrants partially sealing the discovery letters.

22 CONCLUSION

23 Apple respectfully requests that the Court seal the identified information.

24 Dated: July 17, 2024

Respectfully submitted,

25 By: /s/ Mark A. Perry

Mark A. Perry

26 WEIL, GOTSHAL & MANGES LLP

27 Attorney for Apple Inc.